

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OYSTER OPTICS, LLC,

Plaintiff,

vs.

CIENA CORPORATION,

Defendant.

) Case Number: 4:17-cv-05920-JSW

) **JOINT REPORT REGARDING PENDING**
) **MOTIONS TO SEAL PURSUANT TO**
) **DKT. NO. 256**

Pursuant to the Court's Order dated April 3, 2023 (Dkt. No. 256), the parties have met and conferred regarding all pending motions to seal. Following such discussion, they provide the Court with the below chart that sets forth the docket number, exhibit, and portions of the exhibits that can be publicly filed (if any). The parties are willing to provide redacted copies of those exhibits containing only the public portions, if the Court so desires.

| Exhibit No. | Docket No. | Portions that Can be Publically Filed |
|-------------|------------|---|
| 1 | 183-1 | 1-33, 35-58, 61-66, 69-71, 77-138, 148-149, 208, 238-241, 258,268, 270-287 |
| 2 | 183-2 | 1-212, 215,218-219, 220, 221-230, 232-239, 240, 241, 242, 243, 244-344, 342, 350-364-367-375, 379, 382-383, 390-391, 393-482, 484, 487-491, 493-499, 501-502, 503 |
| 4 | 183-4 | 1-120, 181-826. |

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| 5 | 183-5 | 1-17, 19-29, 36-78, 80-86, 198-201, 203-204, 209-213, 215-222, 224-264, 286-302, 304-313, 316-320, 324-325, 328-335, 337, 339, 353-357, 359-361 |
| 6 | 183-6 | 1-16, 18-35, 37-38, 40-50, 52-53, 57, 61-62, 64-73, 88, 115-116, 118-133, 135-142, 149-150, 153,155, 158-159, 162-164, 167-169, 171, 173-174, 176-185, FN 1-125, 127, 131-187, 205-210,216-237, 244-267, 269, 271-273, 275, 277-285, 287-299-303-331, 333-334, 337-350, 360-370 |
| 7 | 183-7 | 1-9, 20-22, 98-100, 111-113, 114:1-16, 115:25-118, 128-130, 139, 145-147, 59-161, 187:1, 187:5-189:18, 189:24-190:4, 190:7-191:6, 203:19-206:6, 209:15-211:25, 217:1-220:14, 222:18-228, 229:1-234:11, 234:16-25, 242:20-243:10, 269:5-271:25, 366:1-367:18, 369:15-372:20, 374:25-374:20, 375:6-378:25, 382:1-383:9, 385:4-387:25, 397:1-17, 398:23-25, 405, 416:1-422:25, 444:1-446:25, 453:1-457:25, 496:1-501:25, 512:1-514:25, 537:1-542:25, 660:1-661:25, 690:1-693:25 |
| 8 | 183-8 | ENTIRE DOCUMENT REMAIN SEALED – THIRD PARTY CONFIDENTIAL |
| 9 | 183-9 | 1-53:6, 57:13-70:18, 71:5-96:4, 115:9-117:7, 123:2-124:7, 127:14-135:19, 137:18-154:3, 156:2-191:7, 208:23-211:1, 298:5-313:10, 320:23-361:9, 406:22-409 |
| 10 | 183-10 | ¶1-260, 325-1041 |
| 11 | 183-11 | ENTIRE DOCUMENT REMAIN SEALED – THIRD PARTY CONFIDENTIAL |

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| 12 | 183-12 | 1-7, 17:1-20:25, 29:1-29:18, 138:1-138:10, 140:18-141:19, 169:11-169:25, 171:21-171:25 |
| 13 | 183-13 | 1-9:2, 9:8-9:11, 9:23-15:9, 19:2-19:15, 20:21-21:21, 22:17-23:7, 23:18-25:5, 26:15-31:21, 32:8-32:20, 33:8-36:25, 37:15-52 |
| 14 | 183-14 | ENTIRE DOCUMENT MAY BE PUBLICLY FILED |
| 15 | 183-15 | ENTIRE DOCUMENT REMAIN SEALED – THIRD PARTY CONFIDENTIAL |
| 16 | 183-16 | ENTIRE DOCUMENT REMAIN UNDER SEAL – CIENA CONFIDENTIAL |
| 21 | 183-21 | ENTIRE DOCUMENT REMAIN UNDER SEAL – THIRD PARTY CONFIDENTIAL |
| 22 | 183-22 | ENTIRE DOCUMENT REMAIN SEALED – CIENA CONFIDENTIAL |
| 24 | 183-24 | 1-6, 25:1-26:13, 26:19-27:25 |
| 28 | 183-28 | ENTIRE DOCUMENT REMAIN UNDER SEAL – THIRD PARTY CONFIDENTIAL |
| 31 | 183-31 | ENTIRE DOCUMENT MAY BE PUBLICLY FILED |
| 32 | 183-32 | ENTIRE DOCUMENT REMAIN UNDER SEAL – CIENA CONFIDENTIAL |
| 34 | 183-34 | ENTIRE DOCUMENT MAY BE PUBLICLY FILED |
| 35 | 183-35 | See Oyster’s separately filed response to OSC |
| 37 | 183-37 | Public portions are found in <i>Oyster Optics, LLC v. Corian America, Inc.</i> , United States District Court for the Eastern District of Texas, Case No. 2:16-cv-01302-JRG, Dkt. No. 864. |

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| 39 | 183-39 | ENTIRE DOCUMENT REMAIN UNDER SEAL – THIRD PARTY CONFIDENTIAL |
| 44 | 183-44 | ENTIRE DOCUMENT REMAIN UNDER SEAL – CIENA CONFIDENTIAL |
| 45 | 183-45 | ENTIRE DOCUMENT REMAIN UNDER SEAL – THIRD PARTY CONFIDENTIAL |
| 47 | 183-47 | 1-7:18, 7:25-8:8, 8:13-10:11, 10:18-25, 11:23-15:2, 15:8-20:28 |
| 48 | 183-48 | 1-9:12, 9:23-10:11, 10:23-11:3, 11:20-12:4, 13:4-12; 13:18-14:14; 14:21-15:6; 15:9-15:18; 15:24-16:28 |
| 49 | 183-49 | 1-17:18; 17:22-18:9; 18:24-19:5; 19:11-21:8, 21:13-22:17, 22:23-26:21, 27:1-27:20, 28:1-29:1, 29:15-30:10, 33:3-34:4 |
| 50 | 183-50 | ENTIRE DOCUMENT MAY BE PUBLICLY FILED |
| 51 | 183-51 | ENTIRE DOCUMENT REMAIN UNDER SEAL – THIRD PARTY CONFIDENTIAL |
| 53 | 183-53 | ENTIRE DOCUMENT REMAIN UNDER SEAL – THIRD PARTY CONFIDENTIAL |
| 54 | 183-54 | ENTIRE DOCUMENT REMAIN UNDER SEAL – THIRD PARTY CONFIDENTIAL |
| 55 | 183-55 | ENTIRE DOCUMENT REMAIN UNDER SEAL – THIRD PARTY CONFIDENTIAL |
| 56 | 183-56 | See Oyster’s separately filed response to OSC |
| 57 | 183-57 | ENTIRE DOCUMENT REMAIN UNDER SEAL – THIRD PARTY CONFIDENTIAL |
| 58 | 183-58 | ENTIRE DOCUMENT REMAIN UNDER SEAL – THIRD PARTY CONFIDENTIAL |

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| 59 | 183-59 | ENTIRE DOCUMENT REMAIN UNDER SEAL – THIRD PARTY CONFIDENTIAL |
| 60 | 183-60 | 1:1-35:1, 36:5-54:4, 55:25-59:25, 61:7-62:4, 62:24-69:4, 70:21-71:23, 72:20-81:5, 81:22-91:24, 94:17-96:19, 97:13-104:25, 105:11-115:22 |
| 61 | 183-61 | ENTIRE DOCUMENT REMAIN UNDER SEAL – OYSTER CONFIDENTIAL |
| 62 | 183-62 | ENTIRE DOCUMENT MAY BE PUBLICLY FILED |
| 63 | 183-63 | ENTIRE DOCUMENT MAY BE PUBLICLY FILED |
| 64 | 183-64 | 1-6, 7:1-42:2 48:11-73:11. 75:1-160:25 |
| 65 | 183-65 | ENTIRE DOCUMENT REMAIN UNDER SEAL – CIENA CONFIDENTIAL |
| 66 | 183-66 | 1-8:25, 33:1-34:15, 43:17-44:23, 49:9-49:23, 76:25-77:25, 122:1-113:11 |
| 67 | 183-67 | ENTIRE DOCUMENT REMAIN UNDER SEAL – CIENA CONFIDENTIAL |
| 68 | 183-68 | ENTIRE DOCUMENT REMAIN UNDER SEAL – THIRD PARTY CONFIDENTIAL |
| 69 | 183-69 | ENTIRE DOCUMENT REMAIN UNDER SEAL – THIRD PARTY CONFIDENTIAL |
| 70 | 183-70 | ENTIRE DOCUMENT REMAIN UNDER SEAL – THIRD PARTY CONFIDENTIAL |
| 71 | 183-71 | ENTIRE DOCUMENT REMAIN SEALED – CIENA CONFIDENTIAL |
| 111 | 221-1 | ENTIRE DOCUMENT MAY BE PUBLICLY FILED |

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| 114 | 221-1 | ENTIRE DOCUMENT REMAIN SEALED – CIENA CONFIDENTIAL, OYSTER CONFIDENTIAL, THIRD PARTY CONFIDENTIAL |
| A | 208-3 | ENTIRE DOCUMENT REMAIN SEALED – CIENA CONFIDENTIAL |
| D | 208-6 | ENTIRE DOCUMENT MAY BE PUBLICLY FILED |
| E | 208-7 | ENTIRE DOCUMENT REMAIN SEALED – CIENA CONFIDENTIAL |
| F | 208-8 | 1-11:3, 11:20-25, 16:1-28 |
| G | 208-9 | ENTIRE DOCUMENT REMAIN SEALED – CIENA CONFIDENTIAL |
| H | 208-10 | ENTIRE DOCUMENT REMAIN SEALED – CIENA CONFIDENTIAL |
| I | 208-11 | ENTIRE DOCUMENT REMAIN SEALED – CIENA CONFIDENTIAL |
| J | 208-12 | 1, 78:1-80:25, 88:1-88:12, 89:6-90:8, 91:11-91:25, 39:1- 39:10, 39:22-25, 116:1-116:11 |
| M | 208-15 | Counsel, As promised during our call yesterday, we would like to provide some additional feedback on your letter regarding Ciena’s contention that certain accused transceiver cards are licensed because they include a Fujitsu Optical modulator. As we discussed during our phone call, Ciena bears the burden on that affirmative defense, including the burden of showing which accused units are licensed. |

1 Now that discovery appears to be complete on that
2 issue, we do not believe Ciena can meet its burden.

3
4 [CONFIDENTIAL]

5
6 First, the vast majority of this time period comes after
7 the Fujitsu settlement agreement was signed.

8 Therefore, any backwards-looking release would be
9 inapplicable. At best, Ciena would have an argument
10 under patent exhaustion. But Ciena cannot satisfy the
11 substantial embodiment test of patent exhaustion,
12 because the Fujitsu modulators does not substantially
13 embody the claims and further fails various other
14 elements of that test.

15
16 Second, Ciena cannot and should not rely on any ruling
17 concerning Oyster's infringement expert reports and
18 contentions in other cases—because Oyster has been
19 clear, at all times before any meaningful fact discovery
20 in this case, that it does not contend that the
21 modulator embodies all—or substantially all—elements
22 of the asserted claims. And the parties have not even
23 begun expert discovery, either.

24
25 [CONFIDENTIAL]

26
27 Per our conversation yesterday, we remain open to
28 receiving additional details and clarity from Ciena

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| | | <p>regarding its defense and the issues addressed above.</p> <p>We also will remain open to continuing to discuss whether the parties can reach any compromises or stipulations of any sort on this issue.</p> <p>Thanks,</p> <p>Reza</p> |
| N | 208-16 | 1-12, 14 |
| P | 208-18 | ENTIRE DOCUMENT MAY BE PUBLICLY FILED |
| Q | 208-19 | 1-104, 106-120 182-846, 849-859E |
| R | 208-20 | ENTIRE DOCUMENT MAY BE PUBLICLY FILED |
| S | 208-21 | ENTIRE DOCUMENT MAY BE PUBLICLY FILED |
| V | 208-24 | ¶¶1-168, 203-241 |

DATED: April 17, 2023

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CERTIFICATE OF SERVICE

I hereby certify that the counsel of record who are deemed to have consented to electronic service are being served on April 17, 2023, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Paul A. Kroeger

SIGNATURE ATTESTATION

The undersigned attests that, pursuant to Local Rule 5-4.3.4(a)(2), concurrence in the filing of this document has been obtained from counsel for all other signatories listed, and on whose behalf the filing is submitted, and counsel concur in the filing's content and have authorized the filing.

Respectfully submitted,
RUSS AUGUST & KABAT

Dated: April 17, 2023

/s/ Paul A. Kroeger
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